

Remarks

Claims 1-11 are pending in the subject application. Applicants acknowledge that claims 3-8 and 11 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicants have canceled claims 3-8 and 11 and amended claims 9-10. Support for the amendments and new claims can be found throughout the subject specification and in the claims as originally filed. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 1, 2, and 9-10 are currently before the Examiner. Favorable consideration of the pending claims is respectfully requested.

Claims 10 and 11 are objected to because of informalities. The Examiner indicates that the term "composition" should be substituted for the term "polypeptide." Applicants gratefully acknowledge the Examiner's careful review of the claims and, in accordance with the Examiner's suggestion, have amended claims 10 and 11 to recite "composition" in order to be consistent with the preamble of claim 9. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claims 1, 2, 9, and 10 are rejected under 35 USC §102(e) as anticipated by Edwards *et al.* (U.S. Patent No. 6,455,280). Applicants respectfully traverse the rejection on the following grounds.

It is respectfully submitted that the '280 patent does not qualify as prior art against the presently claimed invention as the filing date of the '280 patent and the instant application are identical (*i.e.*, December 28, 2000). Where patent applications owned by a common assignee are filed on the same day by different legal entities, a patent that discloses the claimed subject matter claimed in a co-pending patent application does not qualify as prior art. *Ex parte Ishikawa, Hirose, Iwaki, and Fujita*, 154 U.S.P.Q. 183, Bd. Pat. App. Int. (1966). It is respectfully submitted that December 28, 2000 is the effective filing date with respect to the GSSP-2 polypeptides, compositions, and methods of using these polypeptides. A review of the priority applications and parent applications from which this application and the '280 patent descend has failed to identify any disclosure of the GSSP-2 polypeptides, compositions thereof, or methods of using such compositions in the parent or priority documents. The first such disclosure of such polypeptides is in each of the applications filed on December 28, 2000. It is respectfully requested that the Examiner, also, review

these documents in order to facilitate the reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e).

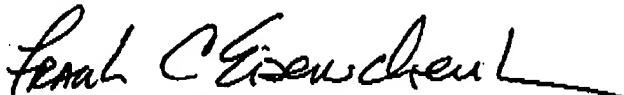
It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position. Applicants expressly reserve the right to pursue the invention(s) disclosed in the subject application, including any subject matter canceled or not pursued during prosecution of the subject application, in a related application.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachment: Marked-Up Version of Amended Claims  
Deposit Declaration

Docket No. G-089US03REG  
Serial No. 09/751,877

Marked-Up Version of Amended Claims

Claim 10 (amended):

10. The [polypeptide] composition of claim 9, wherein said GSSP-2 polypeptide comprises the amino acid sequence of SEQ ID NO: 3.

Claim 11 (amended):

11. The [polypeptide] composition of claim 9, wherein said GSSP-2 polypeptide comprises the amino acid sequence of the GSSP-2 polypeptide encoded by the human cDNA of clone 117-005-2-0-E10-FLC (ECACC Accession No. 99061735).